



February 20, 2007

HOUSE BILL No. 1646

DIGEST OF HB 1646 (Updated February 19, 2007 7:55 pm - DI 116)

Citations Affected: IC 6-2.5; IC 6-3.1.

Synopsis: Renewable fuels grants and tax credits. Extends the retailer's sales tax collection discount for the sale of E85 through the year 2020. Eliminates the termination date for and the statewide cap on a tax credit that is available for the retail sale of diesel with a biodiesel content of at least 2%. Changes the eligibility requirements for the tax credit and the formula for calculating the tax credit. Grants a tax credit for the retail sale of gasoline with an ethanol content of at least 10%.

Effective: July 1, 2007.

**VanHaaften, Gutwein, Grubb,
Davis**

January 23, 2007, read first time and referred to Committee on Ways and Means.
February 20, 2007, amended, reported — Do Pass.

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HB 1646—LS 7643/DI 51+



February 20, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1646

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-2.5-7-5, AS AMENDED BY P.L.122-2006,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]: Sec. 5. (a) Each retail merchant who dispenses
4 gasoline or special fuel from a metered pump shall, in the manner
5 prescribed in IC 6-2.5-6, report to the department the following
6 information:

7 (1) The total number of gallons of gasoline sold from a metered
8 pump during the period covered by the report.

9 (2) The total amount of money received from the sale of gasoline
10 described in subdivision (1) during the period covered by the
11 report.

12 (3) That portion of the amount described in subdivision (2) which
13 represents state and federal taxes imposed under this article,
14 IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.

15 (4) The total number of gallons of special fuel sold from a
16 metered pump during the period covered by the report.

17 (5) The total amount of money received from the sale of special

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fuel during the period covered by the report.

(6) That portion of the amount described in subdivision (5) that represents state and federal taxes imposed under this article, IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.

(7) The total number of gallons of E85 sold from a metered pump during the period covered by the report.

(b) Concurrently with filing the report, the retail merchant shall remit the state gross retail tax in an amount which equals five and sixty-six hundredths percent (5.66%) of the gross receipts, including state gross retail taxes but excluding Indiana and federal gasoline and special fuel taxes, received by the retail merchant from the sale of the gasoline and special fuel that is covered by the report and on which the retail merchant was required to collect state gross retail tax. The retail merchant shall remit that amount regardless of the amount of state gross retail tax which ~~he~~ **the retail merchant** has actually collected under this chapter. However, the retail merchant is entitled to deduct and retain the amounts prescribed in subsection (c), IC 6-2.5-6-10, and IC 6-2.5-6-11.

(c) A retail merchant is entitled to deduct from the amount of state gross retail tax required to be remitted under subsection (b) the amount determined under STEP THREE of the following formula:

STEP ONE: Determine:

(A) the sum of the prepayment amounts made during the period covered by the retail merchant's report; minus

(B) the sum of prepayment amounts collected by the retail merchant, in the merchant's capacity as a qualified distributor, during the period covered by the retail merchant's report.

STEP TWO: ~~Subject to subsection (d), for reporting periods ending before July 1, 2008;~~ Determine the product of:

(A) **in a reporting period ending in:**

(i) 2007, ten cents (\$0.10);

(ii) 2008, ten cents (\$0.10);

(iii) 2009, ten cents (\$0.10);

(iv) 2010, ten cents (\$0.10);

(v) 2011, ten cents (\$0.10);

(vi) 2012, nine cents (\$0.09);

(vii) 2013, eight cents (\$0.08);

(viii) 2014, seven cents (\$0.07);

(ix) 2015, six cents (\$0.06);

(x) 2016, five cents (\$0.05);

(xi) 2017, four cents (\$0.04);

(xii) 2018, three cents (\$0.03);

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(xiii) 2019, two cents (\$0.02);

(xiv) 2020, one cent (\$0.01); multiplied by

(B) the number of gallons of E85 sold at retail by the retail merchant during the period covered by the retail merchant's report.

STEP THREE: Add the amounts determined under STEPS ONE and TWO.

For purposes of this section, a prepayment of the gross retail tax is presumed to occur on the date on which it is invoiced.

(d) The total amount of deductions allowed under subsection (c), STEP TWO may not exceed ~~two one~~ million dollars ~~(\$2,000,000)~~ **(\$1,000,000)** for all retail merchants in all reporting periods **ending in the same calendar year**. A retail merchant is not required to apply for an allocation of deductions under subsection (c), STEP TWO. If the department determines that the sum of:

(1) the deductions that would otherwise be reported under subsection (c), STEP TWO for a reporting period; plus

(2) the total amount of deductions granted under subsection (c), STEP TWO in all preceding reporting periods;

will exceed ~~two one~~ million dollars ~~(\$2,000,000)~~; **(\$1,000,000) for all retail merchants in all reporting periods ending in the same calendar year**, the department shall publish in the Indiana Register a notice that the deduction program under subsection (c), STEP TWO is terminated after the date specified in the notice and that no additional deductions will be granted for retail transactions occurring after the date specified in the notice.

SECTION 2. IC 6-3.1-27-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 0.5. As used in this chapter, "affiliated group" means any combination of the following:**

(1) **An affiliated group within the meaning provided in Section 1504 of the Internal Revenue Code, except that the ownership percentage in Section 1504(a)(2) of the Internal Revenue Code shall be determined using fifty percent (50%) instead of eighty percent (80%) or a relationship described in Section 267(b)(11) of the Internal Revenue Code.**

(2) **Two (2) or more partnerships (as defined in IC 6-3-1-19), including limited liability companies and limited liability partnerships, that have the same degree of mutual ownership as an affiliated group described in subdivision (1), as determined under rules adopted by the department.**

SECTION 3. IC 6-3.1-27-3.7 IS ADDED TO THE INDIANA

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CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2007]: **Sec. 3.7. As used in this chapter,
"metered pump" has the meaning set forth in IC 6-2.5-7-1.**

SECTION 4. IC 6-3.1-27-3.8 IS ADDED TO THE INDIANA
CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2007]: **Sec. 3.8. As used in this chapter,
"motor vehicle" means a vehicle, except a vehicle operated on rails,
that is propelled by an internal combustion engine or motor and is
designed to permit the vehicle's mobile use on public highways (as
defined in IC 6-6-1.1-103) or land used for agricultural purposes.
The term includes a farm tractor or an implement of agriculture
designed to be operated primarily in a farm field or on farm
premises.**

SECTION 5. IC 6-3.1-27-10, AS AMENDED BY P.L.122-2006,
SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2007]: **Sec. 10. (a) A taxpayer that:**

(1) is a dealer; and

(2) **in a taxable year distributes at retail blended biodiesel in a
taxable year, from a metered pump in Indiana for use to
propel a motor vehicle;**

is entitled to a credit against the taxpayer's state tax liability.

(b) The amount of the credit allowed under this section is the
product of:

(1) ~~one cent (\$0.01);~~ **the credit amount per gallon determined
under subsection (c);** multiplied by

(2) the total number of gallons of **biodiesel (B100) contained in
the blended biodiesel distributed at retail by the taxpayer in a
taxable year to propel a motor vehicle.**

(c) ~~The total amount of credits allowed under this section may not
exceed one million dollars (\$1,000,000) for all taxpayers and all
taxable years.~~

(d) ~~A credit under this section may not be taken for blended
biodiesel distributed at retail after December 31, 2010.~~

(c) **The credit amount per gallon that is applicable to a taxpayer
in a particular taxable year depends on the extent to which the
taxpayer achieves the blended biodiesel distribution goals set by
this section for retail fuel sales in Indiana. Achievement of the goal
is determined by computing the taxpayer's index for the taxable
year under subsection (d). The credit amount per gallon used in
subsection (b)(1) is equal to the credit amount specified in the
following table:**

If Taxpayer's Index

Credit Amount



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for Taxable Year is:

At least 1.00	\$0.01
Less than 1.00	\$0.00

(d) A taxpayer's index for a taxable year is the amount determined under STEP FIVE of the following formula:

STEP ONE: Determine the total number of gallons of diesel that does not qualify as blended biodiesel and that is distributed at retail by:

(A) the taxpayer; and

(B) the other members of any affiliated group in which the taxpayer is a member;

in Indiana in the taxpayer's taxable year for use to propel a motor vehicle.

STEP TWO: Determine the total number of gallons of blended diesel and that is distributed at retail by:

(A) the taxpayer; and

(B) the other members of any affiliated group in which the taxpayer is a member;

in Indiana in the taxpayer's taxable year for use to propel a motor vehicle.

STEP THREE: Determine the sum of the STEP ONE and STEP TWO amounts.

STEP FOUR: Divide the STEP TWO amount by the STEP THREE amount, rounding to the nearest one-hundredth (0.01).

STEP FIVE: Divide the STEP FOUR amount by five-tenths (0.5), rounding to the nearest one-hundredth (0.01).

SECTION 6. IC 6-3.1-28-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 0.5. As used in this chapter, "affiliated group" means any combination of the following:

(1) An affiliated group within the meaning provided in Section 1504 of the Internal Revenue Code, except that the ownership percentage in Section 1504(a)(2) of the Internal Revenue Code shall be determined using fifty percent (50%) instead of eighty percent (80%) or a relationship described in Section 267(b)(11) of the Internal Revenue Code.

(2) Two (2) or more partnerships (as defined in IC 6-3-1-19), including limited liability companies and limited liability partnerships, that have the same degree of mutual ownership as an affiliated group described in subdivision (1), as determined under rules adopted by the department.

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SECTION 7. IC 6-3.1-28-0.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 0.7. As used in this chapter, "blended biodiesel" has the meaning set forth in IC 6-3.1-27-2.**

SECTION 8. IC 6-3.1-28-0.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 0.8. As used in this chapter, "blended ethanol" means gasoline with an ethanol content of at least ten percent (10%) by volume.**

SECTION 9. IC 6-3.1-28-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 1.5. As used in this chapter, "dealer" has the meaning set forth in IC 6-6-1.1-103.**

SECTION 10. IC 6-3.1-28-1.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 1.7. As used in this chapter, "distribute at retail" means to sell or otherwise distribute for consideration to an end user in Indiana.**

SECTION 11. IC 6-3.1-28-3.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 3.3. As used in this chapter, "gasoline" has the meaning set forth in IC 6-6-1.1-103.**

SECTION 12. IC 6-3.1-28-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 3.5. As used in this chapter, "metered pump" has the meaning set forth in IC 6-2.5-7-1.**

SECTION 13. IC 6-3.1-28-3.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 3.7. As used in this chapter, "motor vehicle" means a vehicle, except a vehicle operated on rails, that is propelled by an internal combustion engine or motor and is designed to permit the vehicle's mobile use on public highways (as defined in IC 6-6-1.1-103) or land used for agricultural purposes. The term includes a farm tractor or an implement of agriculture designed to be operated primarily in a farm field or on farm premises.**

SECTION 14. IC 6-3.1-28-12 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 12. (a) For all taxable years that begin after December 31, 2008, a taxpayer that:**

(1) is a dealer; and

(2) in a taxable year, distributes blended ethanol at retail from

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a metered pump in Indiana for use to propel a motor vehicle; is entitled to a credit against the taxpayer's state tax liability. If that ethanol content of the blended ethanol qualifies the fuel as E85 (as defined in IC 6-6-1.1-103), the taxpayer is eligible for both the credit under this section and the deduction under IC 6-2.5-7-5(c).

(b) The credit under subsection (a) is equal to the product of:

(1) the credit amount per gallon specified under subsection (c); multiplied by

(2) the total number of gallons of ethanol contained in the blended ethanol distributed by the dealer at retail from a metered pump in Indiana in the taxable year to propel a motor vehicle.

(c) The credit amount per gallon that is applicable to a taxpayer in a particular taxable year depends on the extent to which the taxpayer achieves the renewable fuels standard distribution goals set by this section for retail fuel sales in Indiana. Achievement of the goal is determined by computing the taxpayer's index for the taxable year under subsection (d). The credit amount per gallon used in subsection (b)(1) is equal to the credit amount specified in the following table:

If Taxpayer's Index for Taxable Year is:	Credit Amount
At least 1.00	\$0.01
At least 0.98 and less than 1.00	\$0.0075
At least 0.96 and less than 0.98	\$0.005
Less than 0.96	\$0.00

(d) Subject to subsection (e), a taxpayer's index for a taxable year is the amount determined under STEP SIX of the following formula:

STEP ONE: Determine the sum of the following:

(A) The total number of gallons of gasoline that does not qualify as blended ethanol and that is distributed at retail by:

(i) the taxpayer; and

(ii) the other members of any affiliated group in which the taxpayer is a member;

in Indiana from a metered pump in the taxpayer's taxable year for use to propel a motor vehicle.

(B) The total number of gallons of diesel that does not qualify as blended biodiesel and that is distributed at retail by:

(i) the taxpayer; and

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(ii) the other members of any affiliated group in which the taxpayer is a member; in Indiana in the taxpayer's taxable year for use to propel a motor vehicle.

STEP TWO: Determine the sum of the following:

(A) The total number of gallons of blended ethanol distributed at retail by:

(i) the taxpayer; and
(ii) the other members of any affiliated group in which the taxpayer is a member; in Indiana from a metered pump in the taxpayer's taxable year for use to propel a motor vehicle.

(B) The total number of gallons of blended diesel and that is distributed at retail by:

(i) the taxpayer; and
(ii) the other members of any affiliated group in which the taxpayer is a member; in Indiana in the dealer's taxable year for use to propel a motor vehicle.

STEP THREE: Determine the sum of the STEP ONE and STEP TWO amounts.

STEP FOUR: Divide the STEP TWO amount by the STEP THREE amount, rounding to the nearest one-hundredth (0.01).

STEP FIVE: Determine the renewable fuels standard from the following table that is applicable to the taxpayer's taxable year:

Calendar year in which Taxable Year Begins	Renewable Fuels Standard
2009	0.10
2010	0.11
2011	0.12
2012	0.13
2013	0.14
2014 and thereafter	0.15

STEP SIX: Divide the STEP FOUR amount by the renewable fuels standard determined under STEP FIVE, rounding to the nearest one-hundredth (0.01).

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1646, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17.

Page 2, delete lines 1 through 36.

Page 10, delete lines 8 through 16.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1646 as introduced.)

CRAWFORD, Chair

Committee Vote: yeas 23, nays 0.

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